HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.566 of 2003

Between:

Vijayawada-Guntur-Tenali-Mangalagiri

Urban Development Authority,

Governorpet, Vijayawada, Krishna District,

Represented by its Vice-Chairman. … Appellant

And

S. Rama Rao and others. … Respondents

JUDGMENT

Counsel for the appellant : Smt. Karuna

Counsel for the respondents 1 to 15 : Sri T. Veerabhadraiah

Counsel for respondent No.16. : Government Pleader for Municipal Administration

Counsel for respondent Nos.17 & 18 : Sri B. Anjaneyulu

Feberuary 21, 2006

Per G.S. Singhvi, CJ

This appeal is directed against order dated 11.11.2002 passed by the learned Single Judge whereby he allowed the writ petition filed by respondent Nos. 1 to 15 and directed the appellant herein not to disturb their possession and also to execute necessary registered sale deeds in their favour without demanding any amount towards the enhanced cost.

The Facts:

For the purpose of providing plots to the needy persons, appellant - Vijayawada – Guntur – Tenali - Mangalagiri Urban Development Authority (for short 'VUDA') acquired land measuring Ac.137-83 cents at Payakapuram. The layout prepared by VUDA consisted of 643 plots for Economically Weaker Sections (EWS),

835 for Lower Income Group (LIG), 483 for Middle Income Group (MIG) and 247 for Higher Income Group (HIG). After preparing the layout, VUDA issued public notice in October, 1987 and invited applications for allotment of plots. The terms and conditions were supplied along with the application forms. In all, 1355 applications were received. After scrutiny, the plots of different sizes were allotted to the eligible applicants. They deposited tentative cost determined by the competent authority, but development works were not undertaken apparently because it was found that the area was prone to submersion due to Budameru floods. In order to avert any calamity, VUDA approached the State Government for grant of permission to lay flood bank all around the VUDA land. Ultimately, the flood bank was formed with the assistance of Overseas Development Administration by spending a sum of Rs.5 lakhs. As a consequence of this, layout of the area was reduced affecting 148 plots which had been allotted in 1989.

In the meanwhile, the land owners whose land has been acquired filed applications under Section 18 of the Land Acquisition Act, 1894. The reference Court enhanced the compensation payable to the land owners. After taking into consideration the award for payment of enhanced compensation and the projected costs of development, VUDA authorities fixed the cost of the plots at the following rates:

EWS: Rs.140 per sq. yd.

LIG : Rs.170 per sq. yd.

MIG : Rs.200 per sq. yd.

Respondents 1 to 15 and others protested against the demand of enhanced cost, but the concerned authorities of VUDA did not agree to reduce the cost. Instead, they threatened to cancel the allotments already made. On further representation, the concerned authorities of VUDA reduced the additional demand by 10% and called upon the allottees to pay the difference in the price. At that stage, respondent Nos. 1 to 15 filed writ petition questioning the demand created by VUDA authorities and proposed cancellation of allotments. They pleaded that the decision

of VUDA to enhance the cost is contrary to the terms and conditions notified at the time of advertisement. Another plea taken by respondents 1 to 15 was that the demand of enhanced price is wholly arbitrary, unreasonable and violative of their fundamental right to equality guaranteed under Article 14 of the Constitution. They also claimed that VUDA is bound to pay interest @ 12% on the amount deposited by them in 1989.

In the counter filed on behalf of VUDA, it was averred that the price of the plots specified in the notice inviting applications was tentative and the allottees were bound to pay the final amount determined after completion of the development works. It was further averred that all the allottees had given written undertaking to pay the enhanced cost and, therefore, they were estopped from questioning the demand of the enhanced cost. An objection was also taken to the maintainability of the writ petition on the ground that the writ petitioners have an effective alternative remedy under Section 34 of the Andhra Pradesh Urban Areas (Development) Act, 1975 by filing a petition before the State Government, which they had failed to avail.

On a consideration of the pleadings and arguments of the counsel for the parties, the learned Single Judge indirectly quashed demand of enhanced cost and ordained the appellant to execute registered sale deeds in favour of the writ petitioners (respondents 1 to 15) without demanding any amount towards the enhanced cost. The learned Single Judge also declared that writ petitioners are entitled to benefit of computation of interest on the amount already deposited in the year 1989.

Smt. K. Aruna argued that the order under challenge is liable to be set aside because while granting relief to respondents 1 to 15, the learned Single Judge completely overlooked the factual matrix set out in the counter-affidavits filed on behalf of the appellant. She referred to affidavits of Dr. J. Suresh Babu, the then Vice Chairman, VUDA and P. Simeon, Deputy Assistant Management Officer of VUDA to show that the demand of enhanced cost is in conformity with the terms and conditions supplied to respondents 1 to 15 and argued that the learned Single Judge committed an error by quashing the demand of cost made by VUDA keeping in view the relevant factors.

Learned counsel for respondent Nos.1 to 15 supported the order of the learned Single Judge and argued that the demand created by VUDA authorities was

rightly struck down. Learned counsel also reiterated the plea of estoppel and argued that after having accepted the price at the rate specified in the letters of allotment, the appellant cannot revise the cost.

We have thoughtfully considered the respective arguments and carefully perused the record. Admittedly, the cost projected at the time of inviting applications for allotment of plots was tentative and was subject to variation. This is evinced from Clauses (v), (vi) and (vii) of the terms and conditions, which are reproduced below:

> "v) The estimated cost of the plots indicated in the notice is tentative and is subject to variation from time to time as decided by V.G.T.U.D.A. The allottee shall have to pay any such difference in the tentative cost on account of any enhancement as and when demanded by V.G.T.U.D.A. Failure to make such payment entitled the cancellation of allotment, forfeiture of deposit and instalments paid towards cost of plot and reallottee or plot exchanged.
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> vi) The fixation of final sale price of plot will be done by the authority after the entire development of the area is over and all payments to all concerned are paid within such period as may be fixed by the Vice-Chairman and final sale price so fixed shall be binding on the allottee. The allottee shall pay the difference price, if any, between the final price fixation and the tentative cost price shown in the notice.
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> vii) The number, size and price of the plots notified for allotment are subject to variation as may be found necessary by the authority."

In paragraphs 4 to 7 of his affidavit filed in September 2002, Dr.J. Suresh Babu, the then Vice-Chairman, VUDA explained the reasons for fixing the cost of the plots in the following words:

> "4. It is submitted that the circumstances that lead to re-allotment and enhancing the cost of plot are detailed below:
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> "1) The area allotted to the petitioners are prown to submersion due to Budameru floods. Unless the area be protected with flood bank, it is not safe to reside in the area. Further, after the formation of flood bank only, remaining infrastructure like roads, drains, water supply etc., will be provided, that too, on phased manner and priority/necessity basis. Otherwise the infrastructure so provided will be subjected to damage. The V.G.T.U.D.A. requested the Government to accord permission to lay flood permission is necessary to lay the flood bank, otherwise the flood water will be diverted to other nearby

lands causing damage to the life and crops. There are World Bank proposals in the Government to clear out the total problem of Budameru flood by forming a diversification canal. Since the above proposals are delaying day-by-day, the V.G.T.U.D.A. with the co-operation of O.D.A, has formed the flood bank around the scheme area incurring an amount of Rs.5.00 lakhs. The Flood Bank was laid on the lands that were acquired losing 24 acres affecting 148 plots that were allotted to public during 1989.

2) Further, 582 plots out of 2.008 plots that were available are only accepted by the allottees. As such this authority received very poor demand. Hence this authority was forced to go for an alternative scheme i.e., Housing Scheme with financial assistance of HUDCO to save public money, duly converting certain plots in a stretch in each category for housing.

5. It is submitted that due to the above two reasons, the re-allotment is inevitable and reallotment made is legal. As already submitted, in the interest to save the public money, though there is protest from certain small group of allottees, the re-allotment was made by the V.G.T.U.D.A. Board to E.W.S., L.I.G., M.I.G categories of allottees. This is legal. There is no rule that the lots should be drawn before the public. The allottees have given opportunity for two times. But they protested causing severe loss to the Authority. Now the allotment is completed. It is not possible to do anything since number of allottees have accepted reallotment and paid the enhanced cost and get registered their plots in their favour. Hence, it is not true that all theallottees have protested for re-allotment.

6. It is submitted that since the land owners have filed O.Ps. in the Vijayawada Court during the year 1989 itself, the Authority could not register plots to the allottees. Recently the O.Ps. are disposed off enhancing the market value by Rs.1,000/- per acre with other benefits. Number of allottees have approached the authority for registration of the plots. In themeanwhile, this authority has decided to fix the final cost of the plot duly considering the enhancement of compensation that was awarded by the Court at Vijayawada for the lands belong to Municipal Corporation, Vijayawada, situated adjacent to our lands, thinking that the court will consider the same value. Further, as already submitted that certain development works have to be taken up in phased manner, the cost of development works exceeded due to increase in the price of material. This has also been taken into account while calculating the final cost of the plot. The following expenditure was incurred for developing the Payakapuram Town scheme.

LAND ACQUIRED AT PAYAKAPURAM:

Award No. 5/86 dated 26-8-86 - Ac. 155-56

Award No. 1/87 dated 12-8-87 - Ac. 3-85

Cost of the land as per Award = Rs. 11,000/- per acre

Expenditure incurred for development so far

	Rs. in lakhs
W.B.M. & B.T. Roads	91.22
Storm Water drains	33.49
Water Supply	8.95
Electrification	8.97
Land Scaping	10.67
Flood Bank	5.00
Total:	158.30

7. I submit that the enhancement of cost within the network of framed rules and the allottees are bound to accept the same for their interest. The allottees cannot protest as they are fully aware of the terms and conditions i.e., about the escalation of cost of development and cost of land due to court orders. the petitioner has filed an affidavit duly signing before notary, stating that " I do hereby agree that the rate of plot mentioned is purely tentative and any enhancement in cost of land and cost of development works etc. I shall pay the difference of cost within three months from the date of receipt of intimation of final sale price, failing which the V.G.T.U.D.A. can charge penal interest from 4th month onwards."

Along with the affidavit dated 6-10-2002 filed by Sri P. Simeon, Deputy Estate Management Officer of VUDA, a number of documents were filed showing the method adopted by VUDA for working out the cost. For the sake of reference, the statement specifying the factors, which were taken into consideration for determination of the cost, is reproduced below:

DETAILS OF PAYAKAPURAM SCHEME

I. PLOT COST:

Category	Plot cost originally fixed	Enhanced plot cost	Total Plot cost Rs.	Plot cost after deducting 10% concession given
LIG-II (165 sq. yards)	16,500/-	12,375/-	28,875/-	26,000/-(28,875 – 2875 = 26,000)
MIG (266.66 sq. yards)	32,000	21,332/-	53,332/-	48,000/-(53,332 – 5332 = 48,000)

II. L.A.O.Ps filed:

192/87 to 197/87, 235/88, 27/92, 96/92, 278/92, 279/92, 299/92, 206/93 to 210/93, 212/93 to 215/93, 250/93, 336/93, 337/93, 74/94, 74/94.

Date of disposal of O.Ps in the Principal Senior Civil

Judge, Vijayawada : 25-4-2000

Date of enhancement : 25-4-2000

III. DEVELOPMENT COST:

		Year	Rs. in lakhs
(i)	Roads	1988-90	9.00
		1990-91	11.50
		1991-92	11.50
		1996-97	6.00
		1998-99	10.00
		1999-2000	16.00
		2000-2001	11.00
		2001-2002	16.22
(ii)	Storm water drains	1997-98	33.49
(iii)	Water supply	1996-97	8.95
(iv)	Electricity	1995-96	8.97
(v)	Land scapping	1997-98	7.00
		2000-2001	3.67
(vi)	Flood Bank	1993-94	5.00
		Total	158.30

PAYAKAPURAM SITES AND SERVICES

REVISED COST ANALYSIS

(Rs. In lakhs)

Original cost of acquisition	28.00

Enhanced compensation @Rs. 72,000/- per acre for 144.16 cents.	103.80
	131.80
Cost of land	131.80
Actual cost of development	340.00
Escalation @ 15% on actual cost of development Admn. Charges @ 8% (340+51) x 8%	51.0031.28
Interest @ 12% on investment of land	15.82
Interest on development for half of the project period @ 12.5%(340+51+31.28)	26.39
	596.29

Total saleable area	Ac. 70.74
Net saleable cost per Ac.	596.29
	Ac. 70.74
8,43,000	8,43,000 ---------- = Rs. 174/- or
4840	Rs.175/-4840
Cost of EWS	140/- per Sq.Yd
” LIG	175/- ”
” MIG	200/- ”

Difference in cost of plots due to enhancement

	Old rate per sq. yd	**Revised rate per sq. yd**	**Old cost of plot**	**Revised cost of plot**	**Net increase in plot cost**
EWS	80/-	140/-	8000-00	14,000-00	6000-00
LIG	100/-	175/-	16500-00	28875-00	12375-00
MIG	120/-	200/-	32000-00	53332-00	21332-00

Cost of E.W.S. Plot Rs. 140/- Sq. Yd.

Cost of L.I.G. Plot Rs. 175/- ” ”

Cost of M.I.G. Plot Rs. 200/- ” ”

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Cost Benefit Analysis (Payakapuram)

Sl.No.	Category	No. of plots	Plot area inSq. Yds.	Total area inSq. Yds.	Rate per Sq. Yd.	Cost of total plots
1	E.W.S.	454	100	45400 X	140	63,56,000/-
2	LIG	406	165	66990 X	175	1,17,23,250/-
3.	M.I.G.	112 972	266.66	29866 X	200	59,73,200/-
4.	Reserved Residential area			29234 X	200	58,46,800/-
5.	Open Space	Ac. 7.87		38091 X	225	85,70,475/-
					Total	3,84,69,725/-

Cost of ESW Plot Rs. 14,000/- @ Rs. 140/- per Sq. Yd.

Cost of LIG Plot Rs. 28,875/- @ Rs. 175/- ”

Cost of MIG Plot Rs. 53,332/- @ Rs. 200/- ”

If the averments contained in the aforementioned two affidavits are read in conjunction with the statement prepared by the concerned authorities, it is not possible to find any fault with the method adopted by VUDA for working out the actual cost. In our view, for determination of the final cost, the VUDA was duty bound to take into consideration the cost of land (original and enhanced), cost of development works like roads, storm water drains, water supply, electricity, land scaping, flood bank etc. None of these factors can be said to be extraneous to the determination of the final cost of the plots allotted to respondent Nos.1 to 15 and others. Therefore, the challenge of respondent Nos.1 to 15 to the cost determined by VUDA cannot but be held as misconceived and the learned Single Judge committed a serious error by directing VUDA authorities to finalise the allotment and get the sale-deed registered without insisting on payment of the demand.

Another apparent error committed by the learned Single Judge is that while nullifying the demand created by VUDA authorities, he overlooked the fact that each of the writ petitioners (respondent Nos.1 to 15) had given an unequivocal undertaking to abide by the terms and conditions of allotment, including the clause relating to payment of costs to be finally determined by the competent authority. In our opinion, after having agreed to pay the cost worked out by VUDA authorities, the petitioners could not have questioned the same except on the ground of patent arbitrariness. The learned Single Judge has not found anything patently arbitrary in consideration of the relevant factors for the purpose of determination of the cost of the plots. Therefore, the order under challenge is liable to be set aside.

However, we feel that VUDA authorities should examine the claim of the petitioners for payment of interest on the amount deposited by them, because they cannot be accused of having delayed finalization of the allotment process.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside subject to the modification that VUDA shall examine the claim of the writ petitioners for payment of interest at an appropriate rate on the amount deposited by them at the time of allotment of plots and decide the same within three months from the date of receipt of copy of this order.

G.S.SINGHVI, C.J.

G.BHAVANI PRASAD, J.

February 21, 2006

svs